

**Disciplinary Panel  
American Stock Exchange LLC**

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IN THE MATTER  
OF  
NORBERT W. ENSLEN, JR.

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Case No. 02-49  
Hearing Officer – DMF  
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**DECISION**  
April 19, 2005  
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**In accordance with a Stipulation of Facts and Consent to Penalty, the Disciplinary Panel Chair determined that Respondent violated Exchange Rule 208 and Exchange Rule 345(a)(4), as stipulated, and as a penalty imposed a censure, a \$50,000 fine, and a suspension of ninety (90) calendar days from employment or association in any capacity with an Exchange member or member organization.**

**I. Introduction**

The American Stock Exchange, LLC (the “Exchange”) instituted a formal disciplinary proceeding against Norbert W. Enslen, Jr., a registered employee of Morgan Stanley Dean Witter, Inc., a Regular Member organization of the Exchange. The Disciplinary Panel Chair, presiding without convening a full Disciplinary Panel, pursuant to Article V, Section 1(b) of the Exchange Constitution, held a hearing on March 21, 2005, pursuant to Article V, Section 2 of the Exchange Constitution, to review a Stipulation of Facts and Consent to Penalty (Stipulation), which is attached as Exhibit A. The Exchange and Enslen entered into that Stipulation for the purposes of settling this proceeding and concluding all disciplinary actions by the Exchange against Enslen based upon or arising out of the facts set forth in the Stipulation.

**II. Facts**

Enslen, without admitting or denying liability, stipulated to the facts set forth in the attached Stipulation. The Disciplinary Panel Chair has determined to accept those facts for purposes of this Decision, and they are incorporated herein.

### **III. Violation**

Based upon the stipulated facts, the Disciplinary Panel Chair concludes that Enslin violated Exchange Rule 208, and engaged in conduct inconsistent with just and equitable principles of trade in violation of Exchange Rule 345(a)(4), in that during the period of August 6 and 7, 2001, Enslin through his exercise of trading discretion in family-related accounts, as well as his personal accounts, entered a total of one hundred forty-five (145) odd-lot orders for execution, when such orders should have been consolidated into round lots. In addition, Enslin engaged in conduct inconsistent with just and equitable principles of trade, in violation of Exchange Rules 345(a)(4), in that, after he entered multiple odd-lot orders within short periods of time on the same side of the market, he entered small round lot market orders on the opposite side of the market shortly thereafter to trigger the execution of the odd-lot orders. Through these practices, Enslin was able to buy and sell the stocks in question, through his odd-lot orders, without affecting the market price of those stocks.

### **IV. Penalties and Publicity**

The Stipulation proposes that the Disciplinary Panel Chair impose on Enslin a censure, a \$50,000 fine and a suspension of ninety calendar days from employment or association in any capacity with an Exchange member or member organization. At the hearing, the Parties urged the Disciplinary Panel Chair to approve the proposed penalty. After considering the Stipulation and the statements of the parties, as well as the decisions cited in the Exchange's precedent memorandum, the Chair finds that the proposed penalties are appropriate under the facts and circumstances of this case, and therefore they will be imposed. The Chair further finds that the

results of this disciplinary proceeding should be publicly disclosed, as provided in Rule 12 of the Exchange Rules on Disciplinary Proceedings.<sup>1</sup>

**V. Conclusion**

The Disciplinary Panel Chair accepts the Stipulation of Facts and Consent to Penalty and hereby imposes upon Norbert W. Enslin, Jr. a censure, a \$50,000 fine and a ninety-calendar-day suspension from employment or association in any capacity with an Exchange Member or Member organization.

**FOR THE DISCIPLINARY PANEL**

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David M. FitzGerald, Chair

Copies to:    Kenneth A. Bravo, Esq. (*via facsimile and first class mail*)  
                  Norbert W. Enslin, Jr. (*via overnight and via first class mail*)  
                  Jeffrey L. Brandt, Esq. (*electronically and via first class mail*)  
                  Arlene Collins-Day (*via facsimile and first class mail*)

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<sup>1</sup> Rule 12 exempts from publicity those cases in which the Panel finds that the offense “related solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors.” Those exemptions do not apply to the facts of this case.

Disciplinary Panel  
American Stock Exchange LLC

.....	X	
	X	
IN THE MATTER	X	
OF	X	STIPULATION OF FACTS
NORBERT W. ENSLEN, JR.	X	AND
	X	CONSENT TO PENALTY
	X	Case No. 02-49
.....	X	

This proceeding was instituted by the American Stock Exchange LLC (“the Exchange”) against NORBERT W. ENSLEN, JR. (“Enslen”) (CRD # 840698), a registered employee of Morgan Stanley Dean Witter, Inc. (“Morgan Stanley” or the “Firm”), a Regular Member organization of the Exchange. This Stipulation of Facts and Consent to Penalty is entered into with Enslen pursuant to Exchange Rule 345(k) in order to settle and conclude all disciplinary actions by the Exchange against Enslen based upon or arising out of the facts hereinafter stipulated. Enslen, without admitting or denying the facts, allegations and conclusions contained in this Stipulation of Facts and Consent to Penalty, hereby consents to the findings of violations of the Exchange Rules and to the imposition of the penalties hereinafter provided. Enslen understands that this settlement is subject to approval by an Exchange Disciplinary Panel and by the Exchange Adjudicatory Council and that, if so approved, shall constitute a final decision, which may not be appealed by the parties. Enslen understands and acknowledges that the Disciplinary Panel’s decision in this matter will become part of his disciplinary record and may be considered in any future proceeding brought by the Exchange.

**STIPULATED FACTS:**

- 1.0 During all relevant periods herein, Morgan Stanley was a Regular Member organization of the Exchange.
- 1.1 During all relevant periods herein, Enslin was employed as a registered representative for Morgan Stanley in its Columbus, Ohio branch office.
- 2.0 During all relevant periods herein, Exchange Rule 345(a)(4) provided that if the Exchange determined that any employee of a member or member organization has been guilty of any conduct or proceeding inconsistent with just and equitable principles of trade, the Exchange may disapprove or suspend or withdraw its approval of his employment by a member or member organization and the Exchange may, in addition to or in lieu of any such action, (a) censure him; (b) declare him ineligible for employment in specific capacities; and/or (c) assess a fine against them.
- 2.1 During all relevant periods herein, Exchange Rule 208 provided in pertinent part:

“When a person gives, either for his own account, for various accounts in which he has an actual monetary interest, or for accounts over which such person is exercising investment discretion, buy or sell odd-lot orders which aggregate one or more round lots, a member or member organization shall not accept such orders for execution unless they are, as far as possible, consolidated into round lots, except that selling orders marked “long” need not be so consolidated with selling orders marked “short.”
- 2.2 Pursuant to Exchange Rule 205, Specialists on the Exchange are required to execute an odd-lot market order at the prevailing offer (in the case of an order to buy) or bid (in the case of an order to sell). Pursuant to Exchange Rule 205, Specialists on the Exchange are required to execute an odd-lot limit order at the price of the first round lot transaction which is at or below the specified limit (in

- the case of an order to buy), or at the price of the first round transaction which is at or above the specified limit (in the case of an order to sell).
- 3.0 On August 6 and 7, 2001, Enslin entered approximately 137 odd-lot limit orders and eight (8) odd-lot market orders for ABC and DEF through his exercise of trading discretion in family-related accounts as well as his personal accounts. The odd-lot orders consisted of both buy and sell orders. Approximately 108 of the odd-lot limit orders were executed on these two trade dates. Each of the odd-lot trades entered had a volume of 90 shares.
- 3.1 The division of round-lot orders into odd-lot orders, and Enslin's subsequent entry of multiple odd-lot buy orders in ABC and DEF stock replaced the execution of a round-lot order that would have appeared on the Exchange tape. As a result, actual market interest in ABC and DEF stock was not publicly reflected. Additionally, the entry of multiple odd-lot orders, rather than larger round lot orders, prevented their exposure to the trading crowd, which in turn prevented any opportunity for price improvement in the auction market for ABC and DEF stock.
- 3.2 Exchange rules and systems compel the Specialist, as the only contra-party to odd-lot trades, to execute the multiple odd-lot buy orders entered by Enslin at the prevailing bid or offer.
- 3.3 In entering a total of 145 odd-lot orders over the course of August 6 and 7, 2001, Enslin engaged in a practice of entering multiple odd-lot orders within short periods of time on the same side of the market (e.g. six odd-lot buy limit orders entered all within approximately two minutes). To trigger the execution of these

odd-lot trades, Enslen engaged in a practice of entering a small round lot market order (e.g. sell 100 shares at market) on the opposite side of the market shortly following his entry of the odd-lot orders. The execution of this round lot market sell order would be at or below the limit of Enslen's odd-lot buy orders, thereby triggering the execution of Enslen's odd-lot buy orders. The following chart illustrates Enslen's conduct:

Buy/Sell	Qty.	Limit/ Mkt.	Exec. Price	Entry Time	Exec. Time	Bid/Offer size prior to order entry	Bid/Offer size after order entry
Buy	90	11.10	11.00	10:07.31	10:17	11-11.50 25x2	11-11.50 25x2
Buy	90	11.10	11.00	10:08.01	10:17	11-11.50 25x2	11-11.50 25x2
Buy	90	11.10	11.00	10:08.26	10:17	11-11.50 25x2	11-11.50 25x2
Buy	90	11.15	11.00	10:09.31	10:17	11-11.50 25x2	11-11.50 25x2
Buy	90	11.15	11.00	10:09.50	10:17	11-11.50 25x2	11-11.50 25x2
Buy	90	11.15	11.00	10:09.58	10:17	11-11.50 25x2	11-11.50 25x2
Sell	100	Mkt.	11.00	10:11.37	10:17	11-11.50 25x2	11-11.35 25x2

**CONCLUSION:**

By reason of the foregoing Stipulated Facts, a Disciplinary Panel may conclude that:

- 4.0 Enslin violated Exchange Rule 208, and engaged in conduct inconsistent with just and equitable principles of trade in violation of Exchange Rule 345(a)(4), in that during the period of August 6 and 7, 2001, Enslin through his exercise of trading discretion in family-related accounts as well as his personal accounts, entered a total of one hundred forty-five (145) odd-lot orders for execution, when such orders should have been consolidated into round lots, as described in above paragraphs 3.0 through 3.3.
- 4.1 Enslin engaged in conduct inconsistent with just and equitable principles of trade, in violation of Exchange Rules 345(a)(4), in that Enslin effected numerous odd-lot orders on August 6 and 7, 2001 and entered round lot trades to trigger the execution of such odd-lot trades, which thereby allowed him to buy and sell ABC and DEF stock without effecting the market price of the securities, as described above in paragraphs 3.0 through 3.3.

**DISCIPLINARY ACTION:**

A Disciplinary Panel may impose the following penalty upon Enslens:

- (a) a censure;
- (b) a \$50,000 fine; and
- (c) a suspension of ninety (90) calendar days from employment or association in any capacity with an Exchange member or member organization.

ON BEHALF OF THE  
AMERICAN STOCK EXCHANGE LLC:

By: \_\_\_\_\_  
David Rosenstein  
Vice-President and Chief Counsel  
Enforcement Department  
NASD Amex Regulation Division

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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Norbert W. Enslens, Jr.